

NOT FOR PUBLICATIONUNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

IFETAYO R. AZIBO-BOYNTON, et al.,

No. 3:10-cv-4151 RS (NJV)

Plaintiffs,

ORDER DENYING MOTION TO COMPEL
AND GRANTING REQUEST FOR MONETARY
SANCTIONS (Doc. 31.)

CITY OF PINOLE, et al.,

Defendants.

This case was referred to the undersigned on August 24, 2011, for resolution of Defendants' motion to compel and any further discovery disputes. (Docket No. 32.) On September 13, 2011, a Clerk's Notice was entered in this case, setting the motion to compel for hearing on October 11, 2011, and stating that any opposition to the motion was due no later than September 27, 2011. (Docket No. 36.) September 27, 2011, passed and no opposition to the motion to compel was filed. On October 5, 2011, the Court entered an order denying Plaintiffs' request, filed October 4, 2011, to continue the October 11, 2011 hearing date and the date for the response to the motion. (Docket No. 39.) The Court also found the motion to compel suitable for resolution without oral argument, and thus took it under submission on the papers pursuant to Local Rule 7-1(b).

In their unopposed motion, Defendants seek an order from this Court compelling Plaintiffs' response to Defendants' first set of Special Interrogatories and first set of Request for Production of Documents. Defendants assert that based on the initial service date, responses to these discovery requests were due on or before July 6, 2011. The Court takes judicial notice of the fact that in their request to continue the October 11, 2011 hearing date, Plaintiffs assert that verified responses to these discovery requests were served on September 30, 2011, and October 3, 2011. The Court

1 further takes judicial notice of the fact that in their response to Plaintiffs' request, Defendants state
2 that Plaintiffs served their discovery responses on October 3, 2011, but that the responses contain
3 improper objections.

4 The Court finds that in light of the agreement by the parties that Plaintiffs have served the
5 sought-after discovery responses on Defendants, Defendants' motion to compel has become moot.
6 Any dispute regarding the propriety of objections made to the discovery requests will have to be
7 raised separately.

8 In their motion to compel, Defendants request monetary sanctions in the amount of \$1400.00
9 pursuant to Rule 33(d)(1)(A)(ii), Federal Rules of Civil Procedure. Defendants' counsel provides a
10 declaration in which he provides a detailed account of this matter. He states that he twice granted
11 Plaintiffs extensions of time to comply with Defendants' discovery requests. (James M. Marzan
12 Declaration, ¶ 7 - 9.) Counsel explains that on August 1, 2011, he declined to grant Plaintiffs
13 another extension of time. The discovery responses, however, were not provided. *Id.* at ¶ 9.
14 Defendants' counsel again contacted Plaintiffs' counsel on August 10, 2011, asking that the
15 responses be provided by August 12, and stating that otherwise he would have no choice but to file a
16 motion to compel and seek monetary sanctions. *Id.* at ¶ 10. Counsel states that he received no
17 responses to his letter of August 10, 2011, and that as of August 23, 2011, he had not received
18 Plaintiffs' responses to the discovery requests. *Id.* at ¶ 11. Defendants' counsel certifies that he has
19 made a good faith effort to obtain the discovery responses without Court action. *See* Fed.R.Civ.P.
20 37(d)(1)(B).

21 Defendants' counsel states that his hourly rate on this file is \$175.00. *Id.* at ¶ 12. He states
22 that he spent 5.0 hours on the meet and confer process and preparation of this motion. *Id.* He
23 further states that he anticipates spending another 3.0 hours filing a reply to Plaintiffs' opposition,
24 and in preparing for and attending the hearing on the motion. *Id.* Defendants thus request \$1,400.00
25 in monetary sanctions against Plaintiffs and their attorney.

26 Rule 37(d)(1)(A)(ii) provides that the Court may order sanctions if "a party, after being
27 properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to
28 serve its answers, objections, or written responses." It is undisputed that Defendants' discovery
requests were properly served and that Plaintiffs' responses at issue here were not served prior to the

1 filing of the motion to compel. The Court finds that sanctions are warranted. Because Defendants
2 were not required to file a reply in this matter, or to attend a hearing, the Court will limit the amount
3 of sanctions to the costs of the meet and confer process and preparation of the present
4 motion.

5 Based on the foregoing, IT IS HEREBY ORDERED as follows:

- 6 1) Defendants' motion to compel is DENIED as moot;
7 2) Defendants' request for monetary sanctions is granted in the amount of \$875.00; and
8 3) Plaintiffs and their counsel shall pay Defendants \$875.00 in monetary sanctions within ten
9 (10) days of the date of entry of this order.
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12 Dated: October 12, 2011



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14 Nandor J. Vadas
United States Magistrate Judge
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